



Tasmanian Council of Social Service Inc.

TasCOSS Submission – Carer Recognition Bill

May 2022



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About TasCOSS

TasCOSS's vision is for one Tasmania, free of poverty and inequality where everyone has the same opportunity. Our mission is two-fold: to act as the peak body for the community services industry in Tasmania; and to challenge and change the systems, attitudes and behaviours that create poverty, inequality and exclusion.

Our membership includes individuals and organisations active in the provision of community services to Tasmanians on low incomes or living in vulnerable circumstances. TasCOSS represents the interests of our members and their service users to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

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Introduction

Thank you for the opportunity to make a submission to the Department of Communities in relation to the draft Carer Recognition Bill ('the Bill').

Background

In December 2021, TasCOSS made a submission ('our 2021 submission') to the Department of Communities in relation to the proposed introduction of legislation to better recognise the role of carers in the existing Tasmanian legal framework.

In our submission, we noted our support for legislation which 'recognises the work of carers, who perform work vital to the healthy functioning of our households, workplaces, communities, and our economy'.¹ We also made a number of recommendations in relation to any proposed legislation. The following is a brief reflection on how the Bill addresses these recommendations.

Recommendation one: The legislation should include specific clauses promoting awareness, understanding and promotion of the carer policy principles within care support organisations

This is not addressed by the Bill. As noted in our 2021 submission, this is a feature of legislation in other Australian jurisdictions,² and TasCOSS supports the introduction of similar clauses in the Bill.

Recommendation two: The definition used by Carers Tasmania should be adopted in the legislation

The definition of 'carer' is found in clause 4 of the Bill:

***carer** means a person who provides unpaid care and support to a family member, or friend, who –*

- (a) has a disability, within the meaning of the Disability Services Act 2011; or*
- (b) has a mental illness; or*
- (c) has a chronic or life-limiting condition; or*
- (d) is alcohol or drug-dependent; or*
- (e) is frail or aged*

TasCOSS believes this definition is limited, as it only includes carers who are supporting a person who has a disability as defined by the *Disability Services Act 2011*. We recommend the words 'within the meaning of the Disability Services Act 2011' be withdrawn from subsection (a). We also recommend the use of person-centred language, such as the definition used by Carers Tasmania: '*Carers provide unpaid care and support to someone with disability, mental ill health, a chronic or life limiting condition, alcohol or drug dependence or who are frail or aged.*'

¹ TasCOSS, Submission to Department of Communities, *Carer Recognition Legislation Proposal* (December 2021), 3.

² For example, s11 of the *Carers Recognition Act 2012* (Vic).

Recommendation three: The carer policy principles are to be included in the legislation, as well as a clause specifying that in the case of inconsistency between the carers recognition legislation and other pieces of legislation, the provisions of the other legislation will prevail

The Bill does include eight 'carer policy principles', included as a Carers Charter in Schedule 1:

1. Carers should be acknowledged as diverse and are to be treated as individuals with their own needs within, and beyond, their roles as carers.
2. Carers should be consulted in relation to the development of programs, and the provision of resources, in so far as those programs and resources affect their role as carers.
3. Carers should be empowered to access information and services that are relevant to them in their role as carers.
4. Carers should be supported to participate in, and contribute to, the social, political, economic and cultural life of Tasmania.
5. Carers should be respected for their valuable role in supporting persons in those persons' homes and in supporting them to access, and engage in, a wide range of services.
6. Carers' knowledge about the persons for whom they are caring should be respected, acknowledging that each carer, and each person being cared for, has both rights and responsibilities.
7. Carers should be able to raise concerns about decisions, and services, that affect them as carers or the persons for whom they are caring, without the carers or such persons suffering adverse repercussions.
8. Carers' concerns about decisions, and services, that affect them as carers or that affect the persons for whom they are caring, are to be dealt with as promptly as reasonably practicable.

We support the inclusion of these principles in the Bill, although they are slightly different to those proposed in the consultation.³ Whilst there is no specific clause in relation to potential inconsistencies

³ The Tasmanian Carer Policy 2016 Principles are:

1. Carers are to be acknowledged and treated as individuals with their own needs within and beyond their caring role.
2. Carers are to be acknowledged as a diverse group of people, coming from all walks of life and life stages.
3. Carers are to be provided with relevant information and referred to appropriate services to assist them in their caring role.
4. Carers are to be respected as valued members of a care team.
5. Carers' expertise and experience are recognised and used in the development and evaluation of policies, programs and services that affect them and the people receiving care.

with these principles and other legislation, we note clause 8 includes a provision stipulating that nothing in the Act operates to create in any person any legal rights.⁴ We understand this provision would operate to ensure the principles do not create situations of tension between the carer principles and existing rights under other pieces of legislation, and therefore support this provision.

Recommendations four and five: Carers with lived experience to be included in the Carers Issues Reference Group, which should be elevated to a Ministerial reference group; and annual reporting from Tasmanian Government agencies to the Carers Issues Reference Group, as well as annual reporting to Parliament

The Bill does not include any provisions relating to the Carers Issues Reference Group, which currently meets twice a year and includes the CEOs of a number of key community sector organisations, representatives from the National Disability Insurance Agency, and representatives from relevant Commonwealth and State government agencies.

In our 2021 submission, we noted that, ‘Carers Tasmania also advocate for the elevation of the Carers Issues Reference Group to be a Ministerial reference group, chaired by the Minister rather than a Departmental Secretary’,⁵ as a way of acknowledging and valuing the important role played by carers in Tasmanian society, as well as creating further opportunities for the Minister to work directly with carers and other stakeholders. We also noted other Australian jurisdictions have similar schemes already in place.⁶

TasCOSS continues to support the call for the Carers Issues Reference Group to be elevated to a Ministerial reference group, as well as provisions around regular reporting as per our 2021 submission.

6. The development, evaluation and delivery of policies, programs and services for carers are to take into account carers’ age, gender identity, sexual orientation, cultural and linguistic background, abilities, religion, geographical location and socio-economic status.

7. To the extent possible, carers are to be supported to enjoy optimum health, social and economic wellbeing, and access to educational and employment opportunities.

8. The carer and the person receiving care are to be regarded as a partnership, in which each person has rights and responsibilities.

9. Complaints by carers on decisions and services that affect them and their caring role are to be resolved promptly and without any fear of reprisal.

10. Government agencies are to be given appropriate support to understand and respond to the needs of carers.

⁴ Clause 8 of the Bill reads as follows:

8. No legal liability

(1) Nothing in this Act gives rise to, or is to be taken into account in, any civil cause of action.

(2) Without limiting subsection (1), nothing in this Act –

(a) operates to create in any person any legal rights; or

(b) affects the validity, or provides grounds for review, of any judicial or administrative act or omission.

(3) If an Agency is required by another law to consider particular matters, or to comply with particular requirements, in the performance or exercise of the Agency’s functions or powers, nothing in this Act is to be taken to require the Agency to act inconsistently with that law.

⁵ TasCOSS, Submission to Department of Communities, *Carer Recognition Legislation Proposal* (December 2021), 5.

⁶ For example, Part 3 of the *Carers (Recognition) Act QLD 2008* establishes the Carers Advisory Council, a group which makes recommendations and provides advice to the Minister, as well as working to advance the interests of carers and to promote compliance with the carers’ principles.

We also strongly urge the Government to consider ways of embedding the voices of people with lived experience into the existing frameworks acknowledging and supporting the role of carers. As noted in our 2021 submission, ‘TasCOSS strongly supports the inclusion of carers with lived experience in the Group, particularly as this is a recommendation which has come directly from the Group (which includes the peak bodies in this area). We also invite the Group to consider whether it would be beneficial to include members with lived experience of receiving care as well as lived experience of providing care.’⁷

Recommendation six: Inclusion of clauses to mandate consideration of the carers policy principles by public sector agencies

Clause 7 of the Bill contains the following provisions in relation to the obligation of state service agencies:

1) Each Agency is to take reasonable steps to implement the Tasmanian Carers Action Plan and the Carers Charter.

(2) Each Agency is to monitor and report to the Minister on the steps taken by the Agency to implement the Tasmanian Carers Action Plan and the Carers Charter.

TasCOSS supports the inclusion of this provision in the Bill but recommends an additional subclause stipulating that state service agencies must consult with carers or representative bodies when developing policies or procedures which may impact on carers, such as that contained in relevant provisions of the *Carers (Recognition) Act 2010* (NSW).⁸

Recommendation seven: The Government commit to ongoing resourcing and funding of community service organisations working in the area of public health, disability and mental health

TasCOSS reiterates the importance of ongoing and increased resourcing of community organisations working in these areas. As we noted in our 2021 submission, ‘[f]undamental to acknowledging and assisting carers is ensuring that they, and the people they care for, remain supported by other organisations and services – for example, adequate access to physical and mental health services. Any shortages in the areas of frontline service delivery, particularly for people with mental and/or physical illness or disability, is likely to have a significant impact on carers and their ability to effectively look after themselves and others.’⁹

⁷ TasCOSS, Submission to Department of Communities, *Carer Recognition Legislation Proposal* (December 2021), 4-5.

⁸ See, for example, s7 *Carers (Recognition) Act 2010* (NSW):

(1) A public sector agency must take all reasonable steps to ensure that the members of staff and agents of the agency have an awareness and understanding of the NSW Carers Charter.

(2) A public sector agency must consult with such carers or bodies representing carers as the agency considers appropriate when developing policies that impact on carers.

(3) A public sector agency's internal human resources policies, so far as they may significantly affect the role of a member of staff of the agency as a carer, are to be developed having due regard to the NSW Carers Charter.

⁹ TasCOSS, Submission to Department of Communities, *Carer Recognition Legislation Proposal* (December 2021), 7.



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Legislative change alone will not improve conditions for Tasmania's carers, nor for the people they are working so hard to support. We strongly encourage the Government to commit to further funding in public health, disability and mental health services alongside their proposed legislative reforms in this area.